

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8117 OF 2003

- 1) Shri Zulal Sayara Rajput)
Aged : 47 years, Occ:Service)
R/o Balkan-ji-Bari, Bapugaon)
Ashram Shala, Tal. Dahanu,)
Dist. Thane. )
2) Shri Bhagwan Dharmaji Dhole,)
Aged : 46 years, Occ:Service,)
R/o. Kasa Kendra, Tal.Dahanu,)
Dist. Thane. ).... Petitioners.

Versus

- 1) The State of Maharashtra)
Through the Secretary, School)
Education Department,)
Mantralaya,Mumbai-400 032..)
2) The Secretary,)
Tribal Development Department)
Govt. of Maharashtra,)
Mantralaya, Mumbai-400 032...))
3) The Project Officer,)
Integrated Tribal Development)
Project, Dahanu,Dist.Thane.)

- 4) The Secretary General,)
Balkan-Ji-Bari (Child Welfare)
Association of India), 26,)
Juhu Road, Santacruz (West))
Mumbai - 400 054.)
- 5) The Head Master,)
Balkan-Ji-Bari Ashram Shalla)
Primary Section, Ashram)
Vidyalaya, Bapugaon,)
Tal. Dahanu, Dist. Thane.).... Respondents.

Mr. N. V. Bandiwadekar for the Petitioners.

Mr. S.R.Nargolkar, AGP for Respondent Nos.1 to 3.

None for Respondent Nos.4 and 5.

CORAM : V.G. PALSHIKAR, and

V.R.KINGAONKAR, JJ.

DATED : 27TH APRIL, 2006.

JUDGMENT (Per Kingaonkar, J.):

Both the Petitioners herein are teachers working in a primary school. They impugn Circular dated 9th October, 2003 issued by Respondent No.3 by which direction is issued to treat teachers working in

Primary Ashram School as untrained primary teachers and to refix their salary in the pay scale of untrained primary teachers. Incidentally, they also seek protection of the pay scale.

2. Petitioner No.1 is M.A., B.Ed. and was appointed as Assistant Teacher in Balkan-Ji-Bari Post Basic Ashram Vidyalaya, Dist. Thane, w.e.f. 16th June, 1986. He was placed in the scale of Rs.290-540, which is D.Ed. scale. He was appointed to work in secondary section of the School. The School was having classes of Standard I to X but the Classes of Standard I to IV were in the primary section whereas classes of Standard V to X were in the secondary section. The Petitioner No.2 is B.P.Ed. and was appointed as an Assistant Teacher in the same School w.e.f. 23rd July, 1987 in the D.Ed. scale. He too was appointed in the secondary section of the School.

3. There is no dispute about the fact that the School being Ashram Shala is under the control of Respondent No.2 - Tribal Development Department. For the year 1998-99 approval was granted by Respondent No.2 for appointment of teachers in the School. The Petitioners are permanent teachers and were granted

revised pay scale of Rs.1200-2040. Both of them worked in the secondary section of the School upto 2000. The Respondent No.4 decided to withdraw part of secondary section consisting of Standard V to VII of the School and attach the same to the primary section. Therefore, both the Petitioners were transferred to the primary section because they were teaching the classes of Standard V to VII. They were informed that they will be required to work as primary teachers and under the impugned Circular, they would be treated as untrained primary teachers and hence their pay scale would be reduced. They made representation against the administrative action which, in effect, caused reduction in their pay. Still, however, no favourable response was given by the concerned Respondents. Hence the writ petition.

4. The Respondent No.2 resisted this petition mainly on the ground that the Petitioners have not acquired D.Ed. qualification and mere B.Ed./B.P.Ed. qualification is not sufficient to consider them as trained teachers. Therefore, both of them are not entitled to get D.Ed. scale as trained teachers. The Respondent No.2 sought to rely upon Rule 6 read with Schedule - B (Part-I) of the Maharashtra Employees of

Private Schools (Conditions of Service Regulation) Rules, 1981. It is averred that the Petitioners who are said to be primary teachers are not at all entitled to the scale of D.Ed. teacher and hence the relief sought by them can not be granted.

5. We have considered the rival submissions of the Counsel and have gone through the relevant documents produced on record.

6. Crucial question is as to whether the pay scale and other service conditions of the Petitioners can be changed retrospectively, which will adversely affect them merely because Post Basic Ashram Shala, i.e. secondary division of the school, was transferred as primary Ashram School, i.e. Primary Section of the School. Incidentally, it will have to be determined whether the Petitioners are not covered by Government Resolution dated 28th September, 2003 issued by Respondent No.2.

7. The impugned Government Resolution (Exhibit "I" - pg.27) reveals that for appointment in the primary school, a teacher should necessarily possess minimum

qualification of S.S.C., D.Ed. It is further clarified that candidates having B.Ed. qualification are not eligible for appointment as primary school teachers. The impugned Government Resolution reveals that appointment made prior to 5th May, 2000 shall, however, be continued. The Government Resolution further reveals that those untrained teachers, who are continued in the service and appointed before 5th May, 2000 would be required to acquire qualification of D.Ed. within 5 years period.

8. Both the Petitioners were appointed much before 5th May, 2000. They were made permanent as per orders dated 19th February, 1992 (Exhibit "E"-Pg.23). It is pertinent to note that benefit of permanency of service was given to them from date of initial appointment under Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service Regulation) Act, 1977. Thus, the Petitioner No.1 was deemed as permanent in the service w.e.f. 1st July, 1987 and the Petitioner No.2 was deemed as permanent in the service w.e.f. 23rd July, 1987. The post held by them at the relevant time was that of "High School Teacher" in the pay scale of 1200-2040. Both of them were thus being paid regular pay in the scale as High

School Teachers being trained teachers. This arrangement was continued from 1992 till 2000. By letters dated 13th December, 2000 they were informed that they were transferred from Post Basic Section to Primary Section. Thereafter, the Respondent No.3 issued a letter dated 9th/16th October, 2003 that the pay scales of Graduate Primary Teachers and those who possess the educational qualification of B.A., B.Ed. and who are not SSC/HSC, D.Ed. should be fixed in the scale of untrained primary teacher and proposal thereof should be submitted to the Project Office. This letter of Respondent No.3 tantamounts to reduction of pay scale of the Petitioners without any fault on their part.

9. It is imperative that the service conditions of the Petitioners cannot be adversely and unilaterally changed only because they were transferred to primary section of the School without giving any option to them. Both of them used to teach V to VII classes in the past, prior to the letter issued by Respondent No.3 on 16th October, 2003 and have also continued to teach the same standards in the School. The only change is in the nomenclature of Classes V to VII by shifting of the Post Basic Section to Primary section

of the School. Needless to say, there is no change in the work of the Petitioners.

10. On behalf of the Respondents it is contended that definition of expression "primary education" as used in Section 2(j)(ii) of the Maharashtra employees of Private Schools (Conditions of Service Regulation) Act, 1977 is inclusive of any education imparted in a primary school in such subject and upto such standard as may be determined by the Government from time to time. The primary school is one which imparts primary education. The Petitioners are transferred to primary section of the School and as such they cannot claim benefits of the pay scale available to a high school teacher, learned Assistant Government Pleader contended before us. There is no much force in such contention raised on behalf of the Respondents. A Division Bench of this Court in **Kondiba s/ Dattatrao Mirashe vs. State of Maharashtra & Others**, 2003 (2) Mh.L.J. 432 has observed as under:

"We will have, therefore, to hold that the policy of the Government announced vide Government Resolution dated 14-11-1979 continues to apply for the primary school from 1st to 7th standards

run by the Municipal Council and thus an Assistant Teacher who possesses B.A., B.Ed. qualification and teaches in the schools imparting education from 5th to 7th standards is a trained teacher and, therefore, is entitled to be appointed as the Head Master....."

11. From the above judgment it becomes clear that one post can be filled in by teacher who possesses Graduate qualification along with B.Ed. and/or D.Ed. This judgment is delivered subsequent to judgment in Writ Petition No.4159 of 1998 in pursuance of which the impugned Government Resolution dated 20th September, 2003 is issued by Respondent No.2. Considering tenor of the above judgment of co-ordinate Bench, we are of the opinion that in the Schools having standards V to VII it is permissible to appoint one teacher out of four having B.A./B.Sc./B.Ed. qualification and such a teacher is to be treated as trained teacher. He will be continued to be paid salary as a trained teacher. Both the Petitioners will, therefore, have to be treated as trained graduate teachers.

12. Apart from what we have stated above, both the

Petitioners were appointed as permanent high school teachers in the pay scale of 1200 - 2040 wayback and the subsequent Circular dated 20th September, 2003 cannot adversely change their service conditions. Their pay scales cannot be reduced only by saying that post basic section of the school, in which they were working, has now been transferred as primary section of the school. The only material contention raised in the affidavit filed by Shri M. H. Vadhu, Assistant Project Officer, is that as per Government Resolution dated 20th September, 2003, the Petitioners are treated as untrained teachers of the primary school with the reduction of their pay scales. There is no legal justification to cause such reduction of pay scale when the Petitioners were appointed as permanent high school teachers somewhere in 1992 with retrospective effect of 1987. Such reduction of pay scale is punitive and cannot be resorted to without substantial reason. The Petitioners are required to be treated as trained teachers and are immune from adverse effect of the Government Resolution dated 20th September, 2003.

13. In view of the foregoing discussion, it will have to be said that the impugned order passed by

Respondent No.3 is improper, incorrect and illegal. The Petitioners cannot be treated as untrained primary school teachers and they cannot be denied the pay scale admissible to them as trained high school teachers though they are asked to work in the primary section of the same school. We are of the opinion that the transfer of one section to another section of the school does not impair the service conditions of the Petitioners and they deserve protection.

14. In the result, the writ petition is allowed. It is declared that the Petitioners shall be treated as trained teachers and are entitled to draw salary in the scale as before and their pay scale shall be protected. They are not covered by Government Resolution dated 20th September, 2003 issued by Respondent No.2 and directions issued by Respondent No.3 to reduce their pay scale is quashed. Rule made absolute accordingly. There shall be no order as to costs.

Sd/-

(V.G. PALSHIKAR, J)

Sd/-

(V.R.KINGAONKAR, J)